



Supreme Court Rules for Firefighters

According to a [June 29 AP story](#), the city needed to fill vacancies for officer positions and thus “hired an outside firm to design a test, which was given to 77 candidates for lieutenant and 41 candidates for captain.” Although 56 firefighters passed the exams, including 41 whites, nine blacks and six Hispanics, only 17 whites and two Hispanics apparently scored high enough to expect promotion. When New Haven city officials saw that no African-Americans had qualified, they simply chose to discard the results because they feared black firefighters would bring lawsuits under the 1964 Civil Rights Act.



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But New Haven could not escape the fate it dreaded. Some of the firefighters who were denied the opportunity for promotion, 19 of them white and 1 Hispanic, filed suit claiming discrimination in violation of that same civil rights legislation. President Obama’s Supreme Court nominee Sonia Sotomayor and two appeals court colleagues initially ruled in favor of the city and upheld its decision to toss out the test results.

When the case was appealed all the way to the Supreme Court, however, things turned out differently. In a 5-4 decision, the high court held that, in the words of Justice Anthony Kennedy, “No individual should face workplace discrimination based on race.” Kennedy confirmed that the test was a valid measurement of firefighting capabilities and the city had no legal basis for ignoring the results. “The process was open and fair,” Kennedy said. “The problem, of course, is that after the tests were completed, the raw racial results became the predominant rationale for the city’s refusal to certify the results.”

Justice Kennedy further stated, “Fear of litigation alone cannot justify an employer’s reliance on race to the detriment of individuals who passed the examinations and qualified for promotions.” Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia, and Clarence Thomas joined in the majority decision. Justices Ruth Bader Ginsburg, David Souter, Stephen Breyer, and John Paul Stevens formed the minority. Justice Ginsburg was especially vocal, predicting that the ruling “will not have staying power” and remarking that the plaintiffs “understandably attract the court’s empathy. But they had no vested right to promotion and no person has received a promotion in preference to them.”

Ginsburg might want to have the prescription for her eyeglasses checked. Her attempt to insinuate that the justices in the majority are white racists biased in favor of the predominantly white firefighters fails the most obvious test: Clarence Thomas, the court’s only black justice, was part of the majority. Her claim that the white and Hispanic firefighters had “no vested right to promotion” when they scored highest on the test only serves to show that she thinks the black firefighters did have a vested right to promotion even if they aren’t the most qualified. Perhaps she really would prefer to be rescued from a



Written by [Steven J. DuBord](#) on June 30, 2009

burning building by firefighters who were chosen on the basis of race rather than firefighting proficiency, but it is only logical to assume that most people who are in danger of life and limb only care that the most skilled firefighters come to their rescue.

Other liberals nonetheless share Ginsburg's way of thinking. A [June 29 USA Today article](#) quoted Senator Patrick Leahy (D-Vt.), who chairs the Judiciary Committee, as being concerned about how the ruling affects the Civil Rights Act: "This is a cramped decision that threatens to erode these protections and to harm the efforts of state and local governments that want to build the most qualified workforces." Thus Leahy believes that the most qualified workforce can somehow be built by denying promotions to those who have proven they are qualified, though the logic of this reasoning is not immediately apparent.

Those with conservative and constitutional leanings, however, had good reasons for cheering the firefighters' victory. Senator John Cornyn (R-Texas), another member of the Judiciary Committee, said, "Today's decision is a victory for evenhanded application of the law.... The Supreme Court saw the case for what it is: a 'race-based decision' that violates federal law. And while the justices divided on the outcome, all nine justices were critical of the trial court opinion that Judge Sotomayor endorsed."

And Ilya Shapiro, senior fellow at the Center for Constitutional Studies and editor in chief of the *Cato Supreme Court Review*, said that "the court reached the correct result: The government can't make employment decisions based on race. While the city's desire to get more blacks into leadership positions at the fire department is commendable, it cannot pursue this goal by denying promotions simply because those who earned them happen to have an inconvenient skin color."

Photo of New Haven firefighters with attorney: AP Images



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